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| 10/798,325      | 03/12/2004  | Per Kirkegaard       | 900.43482X00        | 6138             |

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|--------------------------------------|------|------------|
| 20457                                | 7590 | 07/19/2007 |
| ANTONELLI, TERRY, STOUT & KRAUS, LLP |      |            |
| 1300 NORTH SEVENTEENTH STREET        |      |            |
| SUITE 1800                           |      |            |
| ARLINGTON, VA 22209-3873             |      |            |

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| EXAMINER     |  |
| FIDEI, DAVID |  |

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 3728     |              |

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|-------------------|---------------|
| NOTIFICATION DATE | DELIVERY MODE |
| 07/19/2007        | ELECTRONIC    |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

officeaction@antonelli.com  
dprater@antonelli.com  
tsampson@antonelli.com

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/798,325

Applicant(s)

KIRKEGAARD, PER

Examiner

David T. Fidei

Art Unit

3728

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 8-13 and 21-24.  
Claim(s) rejected: 5-7 and 14-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
David T. Fidei  
Primary Examiner  
Art Unit: 3728

Continuation of 11. does NOT place the application in condition for allowance because: each and every limitation of the claims are present in the patent to Borden inasmuch as is claimed. Applicant takes issue with the interpretation of Borden disclosing a card being of size corresponding to a credit card. It is noted that only claim 5 recites this limitation. Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), § MPEP 2106 (II)(c). There is nothing in the language in question that requires the card be exactly the dimensions of 3.346 inches by 2.216 inches in order to meet the claimed recitation of corresponding to a credit card. The present specification states the card is disclosed as being about 85mm in length and about 54mm in width where it is not clear what about these parameters entails. Dictionary.com defines about as being near or close. In this capacity 3 inches in length is not considered by Applicant to be about 3.346 inches, however the basis of this comparison is not clear. While the finger projection 16 dimensions are subtracted from the overall length by Applicant to determine the card length, the card length of Borden is that dimension that includes the legs 14 and 16. The same analogy applies for the width of the card of Borden being 1.75 inches that is about 2.216 inches. There is nothing in the present specification indicating that card of 3 inches by 1.75 inches can not be interpreted as a size corresponding to a credit card. Furthermore, corresponding, in its broadest definition is defined by dictionary.com as being similar, having a likeness or resemblance. Therefore, it is submitted that the dimensions disclosed by Borden has a likeness or resemblance of a credit card inasmuch as is claimed and disclosed.

Regarding the thickness of the card 10 of Borden, Applicant appears to argue the angle of leg 14 adds to the thickness due to an upward angle of less than 45 degrees. However, as shown in figure 2 the thickness of the tool 10 appears substantially the same throughout the tool. While the thickness of the tool is not disclosed it is shown in figure 2 to be relatively thin compared to its length and considered to resemble a credit card.

It is acknowledged claim 14 recites a sixth paragraph, section 112 limitation and the function of the card must be given weight. It is not agreed the Examiner can not point to anything explicit or inherent in Borden that suggests a card for removal of ticks or other insects. As noted in the final rejection, the tool of Borden includes a slit defined by cavity 60. There is also disclosed a leg 16 that is shaped like a finger projection. These structures have been clearly identified in the rejection and have an opening that tapers to a closed end as shown in figure 1 of Borden. The closed end of cavity 60 and beveled arch 30 defines an abutment surface that one can manifestly use as a surface to remove a tick or other blood sucking insect by pushing the closed end of the cavity against the tick or blood sucking insect. The argument that the structures 24, 30, 48, 60 and 70 are not suitable for the removing of ticks or other blood sucking insects remains lost in the claims. Nothing is defined in the claims setting forth the parameters of the slit or outer end of the flexible finger that is for removing the tick. In view of the foregoing it is submitted the claimed subject matter is anticipated by Borden.